Decision **ALTERNATE DRAFT DECISION OF COMMISSIONER BILAS**
(Mailed 1/24/02)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Proposed Policies and Programs Governing Energy Efficiency, Low-Income Development and Demonstration.	Rulemaking 98-07-037 (Filed July 23, 1998)

INTERIM OPINION ADDRESSING PETITIONS FOR MODIFICATION OF DECISION 01-03-073 REGARDING SELF-GENERATION INCENTIVES

1. Introduction and Summary

By Decision (D.) 01-03-073, dated March 27, 2001, the Commission adopted program initiatives for load control and self-generation, pursuant to Pub. Util. Code § 399.15(b).[1] Today's decision addresses Petitions For Modification that have been subsequently filed by Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCal), Kawasaki Motors Corporation, U.S.A. (Kawasaki) and RealEnergy Inc. (RealEnergy) regarding several aspects of the self-generation program.

"Self-generation" refers to distributed generation technologies (microturbines, small gas turbines, wind turbines, photovoltaics, fuel cells and internal combustion engines) installed on the customer's side of the utility meter

[1] All statutory references are to the Public Utilities Code, unless otherwise noted.

that provide electricity for either a portion or all of that customer's electric load. Under the program adopted in D.01-03-073, financial incentives are provided to three different categories (or levels) of distributed generation technologies:

Level 1: The lesser of $4.50 / watt or 50% of project costs for photovoltaics, wind turbines and fuel cells operating on renewable fuels;

Level 2: The lesser of $2.50 / watt or 40% of project costs for fuel cells operating on non-renewable fuel and utilizing sufficient waste heat recovery, and

Level 3: The lesser of $1.00 / watt or 30% of project costs for microturbines, internal combustion engines and small gas turbines utilizing sufficient waste heat recovery and meeting reliability criteria.

The Commission authorized combined annual budgets of $125 million for PG&E, SoCal, Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) over a four-year period.[2] The program was officially launched on June 29, 2001.

By today's decision, we make certain modifications and clarifications to D.01-03-073. Based on Kawasaki's Petition, we change the maximum project size and corporate parent limit for self-generation incentives from 1 megawatt (MW) to 1.5 MWs. However, we do not modify the current cap on the incentives that any single project can receive. This change conforms the project size limit to the scales and sizes of units in the market, while still assuring a broad dispersion of program funds.

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[2] PG&E, SoCal, SDG&E and SCE are referred to collectively as "the utilities" throughout this decision.

In addition, we clarify that the utilities should carry over any unused funding from one year to the next during the four-year program period, and may borrow against the annual budget of a subsequent year if program participation is larger than anticipated in the current year. This treatment is consistent with our approach to funding other public purpose programs (e.g., energy efficiency) and reflects our intent to fund the load control and self-generation initiatives at the full four-year authorization level.

We also clarify, in response to the PG&E and SoCal joint petition, that their natural gas-only customers who take electric service from a municipal utility are eligible to participate in the self-generation program, subject to certain restrictions described herein.

Finally, we deny the RealEnergy Petition for the reasons discussed herein.

2. Procedural History

On June 24, 2001, PG&E and SoCal jointly filed a Petition for Clarification[3] of D.01-03-073 (Joint Petition). PG&E and SoCal seek Commission authorization to offer self-generation incentives to their gas customers that take electric service from a municipal utility. The Center For Energy Efficiency and Renewable Technologies filed comments in support of the Joint Petition. In addition, the League of California Cities and RealEnergy sent letters of support to the Commissioners, with copies served on the parties to this proceeding.

By Ruling dated August 24, 2001, the assigned Administrative Law Judge (ALJ) directed the utilities to clarify their implementation policies and practices

[3] PG&E and SoCal titled their pleading as a Petition for Clarification. We will treat this pleading as a petition for modification.

for energy efficiency services to customers who take energy services from a municipality or entity other than an investor-owned utility (IOU). The utilities filed their joint response on September 14, 2001.

On August 24, 2001, Kawasaki filed a Petition to Modify D.01-03-073 (Kawasaki's Petition) requesting an increase in the 1 MW project size limit for self-generation incentives to 1.5 MWs. No comments were filed in response to Kawasaki's Petition.

On September 19, 2001, RealEnergy filed a Petition to Modify D.01-03-073 (Real Energy's Petition) with respect to several issues relating to the implementation of self-generation incentives. In addition to supporting PG&E and SoCal's Joint Petition, RealEnergy requests: 1) inclusion of certain types of equipment in the project costs used to determine incentive payments, 2) application of the 1 MW corporate parent limit only in quarters when excess funds are not available, 3) adoption of certain applicant due diligence requirements, and 4) participation by interested parties in the working group established by D.01-03-073.

On October 5, 2001, SCE, PG&E and SDG&E / SoCal filed comments in response to RealEnergy's Petition. RealEnergy and SDG&E / SoCal filed reply comments on October 15, 2001.

3. Issues

The petitions raise the following issues for our consideration:

1. Should customers within the IOU's service territory that take electric service from a municipal utility be eligible for self-generation incentives?

2. Should the 1 MW project size limit be increased to 1.5 MWs?

3. What types of equipment should be included in the project cost used to determine incentive payments?
4. Should the 1 MW corporate parent limit apply only in quarters where excess funds are not available?
5. Should the Commission require applicants to demonstrate that certain milestones are being met in order to reserve funding for their project?
6. Should the working group adopted in D.01-03-073 be expanded to include interested parties?
7. How should the utilities administer any overruns or under spending in the various annual budgets set by the Commission in D.01-03-073?

We address each of these issues in the following sections.

4. Eligibility of Customers Taking Electric Service From Municipal Utilities

SoCal and PG&E request the Commission to clarify that their natural gas customers taking electric service from municipal utilities are eligible to apply for incentives under the self-generation program. In their view, this clarification is consistent with the intent of the Legislature and the Commission. In addition, SoCal and PG&E contend that excluding such customers is inconsistent with the implementation of other public purpose programs, i.e., energy efficiency programs. SoCal and PG&E argue that since a portion of the program costs are charged to gas customers, it follows that gas-only customers should be allowed to participate in the program.

In SCE's view, on the other hand, ratepayers should not be forced to fund self-generation projects within the service territory of a municipally-owned utility. SCE questions whether SoCal and PG&E's interpretation is consistent with the intent of Assembly Bill (AB) 970, which it describes as being adopted "in direct response to the recent energy crisis facing investor-owned utilities and their customers."[4] No matter what the Commission decides on the Joint Petition, SCE urges the Commission to clarify that only SCE customers are eligible to participate in SCE's self-generation incentive program.

In considering this issue, we first look to the language of AB 970, which added § 399.15(b). That section requires the Commission to "adopt energy conservation demand-side management and other initiatives in order to reduce demand for electricity and reduce load during peak demand periods" and further specifies that such initiatives should include incentives for distributed generation. There is no further guidance in this language as to the specific implementation details for the program, including the eligibility issue raised by the Joint Petition.

Parts of AB 970, however, place emphasis on the need for consumers to move toward energy independence and self-sufficiency.[5] Taken as a whole, we believe that AB 970 was designed to provide customers with options for reducing their energy consumption through a variety of means, one of which is this incentive program for self-generation.

We also look beyond AB 970 to standard practice of other public benefits programs overseen by the Commission. PG&E and SoCal's proposed treatment of municipal utility customers under the self-generation program is consistent

[4] SCE Response to Petition of RealEnergy, October 5, 2001, p. 8.

[5] See, for example, AB 970 Section 6, chaptered as Public Utilities Code Section 372, paragraph (f), in particular, which states, in part: "to increase self-sufficiency of consumers of electricity through the deployment of self-generation and cogeneration…"

with the eligibility requirements for utility energy efficiency programs offered to low-income and non-low income customers. In response to the assigned ALJ's ruling, the utilities state that they do provide their natural gas customers who take electric service from a non-IOU with energy efficiency incentives or measures designed to reduce electric loads, when those measures also result in reduced natural gas usage. This is the appropriate analogous situation to provision of incentives for Level 2 and 3 technologies as part of the self-generation program, because those technologies are required to be installed in situations where they utilize waste heat recovery. Thus, the overall thermal load at a given facility will be reduced, and may, in part, displace natural gas consumption.

In the past, the Commission has also required SoCal to demonstrate electricity savings for their energy efficiency programs[6] even though they do not provide electric service. In addition, the Commission has previously utilized a principle of providing access to program benefits to customers who pay into the funds to support the programs. For example, SoCal non-core customers do not pay the public purpose program surcharge on their bills, and therefore are not eligible to participate in energy efficiency programs offered by SoCal. By that logic, therefore, customers who do contribute to program funds should be eligible to participate.

According to SoCal, making their customers who take electric service from non-IOUs ineligible for program participation would result in approximately 30% of their commercial and industrial customers, and 20% of their total load,

[6] See D.01-01-060, energy and peak demand savings goals.

being excluded from participation.[7] This represents a significant portion of the SoCal customer base whose options for taking advantage of the self-generation incentive programs offered should not be unduly limited.

PG&E and SoCal, in their petition, also further argue that D.01-03-073, which established the self-generation program design, explicitly excluded certain types of customers of which those taking electric service from non-IOUs were not listed. While this is true, it is not by itself a sufficient argument. The fact that SoCal customers were included at all, however, demonstrates that we did not intend to exclude gas-only customers from program participation, either as contributors (through their rates) or as participants. In fact, the Commission could have limited the program only to electric IOU customers, but explicitly did not do so, stating: “some of the program costs for self-generation are assigned to gas ratepayers, as well as electric ratepayers, to reflect the public benefits (e.g., environmental) that will accrue to gas ratepayers as well.”[8]

In addition, in the case of SoCal customers, we see no reason that SoCal gas customers who are SCE electric customers should be treated differently from SoCal gas customers who are municipal electric customers.

We recognize that many of the non-investor-owned electric utilities serving natural gas customers of IOUs offer some self-generation incentive programs, particularly for Level 1 technologies. We also note that SoCal and SCE may be offering the same program to the same customers in their service territories, and that the CEC and other state agencies may be offering incentives

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[7] PG&E and SoCal Petition for Clarification of D.01-03-073, page 2.

[8] D.01-03-073, mimeo. p. 13.

for self-generation. Thus, the mere presence of other self-generation program incentives does not persuade us to reduce program eligibility. In fact, the self-generation program established in D.01-03-073 provides different incentive options, particularly for Level 2 or Level 3 technologies, from other self-generation programs of which we are aware.

PG&E and SoCal argue that D.01-03-073 must include municipal utility electric customers because it contains language referring to “all the utility service territories” and “any customer of an investor-owned distribution company in California” in describing the program. We agree. In reviewing the record in this proceeding, including the Energy Division report on recommended programs, comments on that report and on the draft decision, we find that the issue of whether or not municipal electric customers could participate in the program was not raised as a concern or consideration by any party. As discussed above, defining eligibility to include these customers for electric load-reducing programs would not be a departure from current practices for other public purpose programs. Therefore, it is reasonable to conclude that D.01-03-073 allocated program funding to reduce the electric and natural gas loads of investor-owned utilities, regardless of fuel provided by the IOU.

In sum, based on our consideration of the context for the development and implementation of the self-generation program initiatives, the eligibility requirements for other public purpose programs that reduce electric and natural gas loads, and the language of D.01-03-073, we approve the Joint Motion.

Today’s decision does not, however, address the issue of how best to coordinate the program incentives offered by SoCal or PG&E to their gas customers served by municipal utilities, with self-generation incentives that might also be offered by municipal utilities to these same customers. This issue of how to coordinate multiple funding sources will be addressed by separate decision in response to South Coast Air Quality Management District's December 7, 2001 Petition for Modification of D.01-03-073.

5. Increasing the 1 MW Project Size Limit to 1.5 MWs

In D.01-03-073, we adopted a project size limit of 1 MW because this size represents "a fairly large installation for a single customer site and, at the same time, will not use up an unreasonable amount of program funding."[9]

We are persuaded by Kawasaki's Petition that the 1 MW limit may inadvertently deter customers from purchasing the more efficient, less polluting gas-fired distributed generation technologies because those units are manufactured in sizes somewhat higher than 1 MW. The record indicates that a limit of 1.5 MWs is consistent with a logical break in the market. This is the upper bound of units typically considered by large commercial and small industrial customers who have traditionally relied upon their local utility for power. Hence, we will modify D.01-03-073 to allow units up to this size limit to be eligible for self-generation incentives. We apply the higher size limit to Levels 1, 2 and 3 in order to treat all distributed generation technologies consistently with respect to size limits, as we did in establishing the original 1 MW limit.

However, with the limited funding available for self-generation incentives, including renewable technologies (much of which has already been subscribed in the first few months of the program), we are not inclined to change the current cap on the incentives that any single project can receive. Therefore, while we will allow units up to 1.5 MWs to be eligible under the program, any output capacity

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[9] *Ibid.* p. 28.

above the first MW will not be eligible for additional incentives. For example, a Level 3 project that is within the 1.5MW size limit would receive the lesser of $1 million ($1.00/W x 1 MW) or thirty percent (30%) of total project costs after being scaled back to 1 MW. This change will conform the project size limit to the scales and sizes relevant to the market, while still assuring a broad dispersion of program funds.

6. Equipment Included In Project Costs

In D.01-03-073, the Commission determined that Level 2 and 3 technologies (fuel cells utilizing non-renewable fuels, microturbines, small natural gas turbines and internal combustion engines) must utilize waste heat recovery at the customer site in order to be eligible for incentive payments. By D.01-06-035, the Commission adopted the waste heat recovery standards defined for cogeneration in § 218.5 as the waste heat recovery requirement for these technologies. Those standards require that at least 5% of the facility's total annual energy output must be in the form of useful thermal energy, and establish a minimum system efficiency requirement of 42.5%.

RealEnergy requests that we clarify that all waste heat recovery equipment that must be installed in order for an applicant to satisfy these requirements be included in project costs for the purpose of calculating the incentive payment. Although RealEnergy's Petition does not clearly identify such equipment, its reply comments suggest that devices such as absorption chillers would be included, since they create thermal output when connected to the generation device.[10]

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[10] RealEnergy's Reply Comments, p. 3. See also PG&E's Comments, p. 2.

As the utility administrators explain, eligible project costs currently include heat recovery equipment directly connected to the generation equipment, and heat recovery piping and controls necessary to interconnect primary heat recovery equipment to existing thermal load at the project site. However, the program administrators have distinguished between this type of equipment and the cost of devises that then use the heat ("thermal load equipment"), such as absorption chillers.[11] We believe that this is a reasonable line to draw. If the utilities are directed to pay for one type of thermal load equipment like chillers, developers are also likely to seek funding for other thermal load equipment, such as boilers and radiators, thermal storage tanks, etc. We deny RealEnergy's request, and affirm the program administrators' decision to exclude the cost of thermal load equipment at the project site from eligible project costs.

7. Application of the 1 MW Corporate Parent Limit

In D.01-03-073, we stated that individual customers could apply for incentives for more than one system, "as long as the combined size does not exceed 1 MW."[12] The program administrators have translated that restriction into a limit of 1 MW per corporate parent, per participating utility per calendar year.

RealEnergy asserts that the corporate parent limit "frustrates the expenditure of program funds," and requests that the Commission provide some

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[11] SCE's Comments, Appendix A.

[12] D.01-03-073, mimeo. pp. 27-28.

flexibility in its enforcement.[13] Specifically, RealEnergy proposes that the corporate parent limit be lifted if, at the end of a quarter, there are remaining program funds that have not been committed. The per site (project size) limit would apply at all times.

In establishing limits on the number of projects that a customer could apply for, we intended to use program funds to assist many customers in installing self-generation, rather than allowing a few entities to use most of the project funds. Indeed, in setting this limit, we noted that one system of the maximum size would receive about one-third of the available funding in SDG&E’s service area, which is the smallest budgeted program.[14] RealEnergy suggests in its Petition that excess funds will languish unused from quarter to quarter, unless customers that are already participating in the program are allowed to apply for incentives for additional sites in that same calendar year. However, there is no evidence that the expenditure of program funds has been unduly hampered by the corporate parent cap, despite RealEnergy’s assertions.

During the first four months of the program, PG&E received applications for more than $40 million in incentives, out of a total annual program budget of $60 million (including administration and marketing), and is oversubscribed for Level 1 (renewable) technologies. Similarly, SCE is already oversubscribed in Level 1 and has approximately $20 million out of $32.5 million reserved to date. Over half of the program funding has been reserved in SDG&E’s service area. Only SoCal appears to be experiencing a large proportion of unreserved funding

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[13] RealEnergy Petition, p. 4.

[14] D.01-03-073, mimeo. p. 28.

during the initial four months of the program, but we expect this situation to improve as SoCal increases its marketing efforts in coordination with SCE.[15] Any future requests for shifting funds into Levels 2 or 3 by either SCE or SoCal should be coordinated to reflect the current program activity in all levels throughout the joint service territory.

Our experience with program implementation to date does not warrant relaxation of the corporate parent limit. Since it is imposed on a calendar year basis, a single parent company is already eligible to participate in eligible projects totaling 6 MW over the four-year program period, based on the higher 1.5 MWs project size limit adopted above. RealEnergy's proposal would allow this level of participation to further increase based on the ebb and flow of funding requests versus program budgets, from one quarter to the next. This suggests that the utilities would have to create a quarterly budgeting process, which would add an additional and unnecessary level of complexity to the administration of the program. We also share SCE's concerns that this proposal could encourage some participants to try to game the system by delaying their projects until the end of a given quarter.

For the above reasons, we will not modify the corporate parent limit, other than to increase the limit to 1.5 MWs per calendar year, consistent with our decision today to grant Kawasaki's Petition.

8. Due Diligence Requirements

RealEnergy proposes that the Commission require applicants to meet additional due diligence requirements. In particular, it argues that applicants for

[15] PG&E's Comments, p. 4, SDG&E/SoCal comments, p. 4.

projects which require air permits submit a copy of the authority to construct the proposed project, and that other applicants be required to submit a copy of their building permit. In addition, RealEnergy suggests that additional, unspecified development milestones be set up as conditions to receiving funding.

The premise for this change is the argument that applicants may reserve program funds for up to nine months before making a decision as to whether to proceed with the project.[16] However, the record in this proceeding indicates that this premise is not accurate. Currently, after an applicant receives a letter from the program administrator telling it that the project has conditionally qualified for incentive payments, the applicant has 90 days to meet a variety of requirements. These include: (a) applying for an interconnection with the utility; (b) applying for a building permit and air permit; (c) signing an equipment purchase order or agreement; and (d) providing a detailed project cost breakdown. The project then has an additional nine months beyond that date (for a total of one year from the conditional approval letter) to come on line. Because the applicant must sign the equipment purchase order, it must make a decision about whether to proceed within 90 days, not nine months.

Moreover, the specific proposals suggested by RealEnergy could create unnecessary obstacles to some projects. As PG&E points out, developers will want to know whether they will be receiving incentive funds <u>before</u> they go through the expense of obtaining air or building permits (which potentially could be quite expensive), because their willingness to pay for the cost of

[16] RealEnergy's Petition, p. 4.

obtaining such permits may be influenced by whether they will qualify for funds under the self-generation incentive program.

We believe that it may be reasonable to revise the current timeline or set up new milestones, based on experience with this program. However, this is one of the issues that program administrators and the Energy Division, in consultation with others, should review during the program evaluation process after some experience has been gained. Right now, just four months into the program, RealEnergy's proposed changes are inappropriate and premature.

9. Working Group Structure

In D.01-03-073, we anticipated that some of the implementation details for the self-generation program would require further development, and directed that the program administrators, working with the Commission's Energy Division, develop them on a consistent, statewide basis.[17] Consistent with our direction in D.01-03-073, the California Energy Commission participated in meetings with program administrators and Energy Division to discuss the program details it has developed to encourage self-generation.[18] In D.01-06-035, we directed Energy Division to select the final program details for statewide implementation, without delay.[19]

RealEnergy requests that meetings of the working group, described above, allow for participation by interested parties in discussions and in the decision-making process on a regular basis. RealEnergy contends that there is currently

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[17] D.01-03-073, mimeo. p. 37. Ordering Paragraph 16.

[18] *Id.*

[19] D.01-06-035, mimeo. p. 10. Ordering Paragraph 4.

no procedure for the public or interested parties to communicate with the working group, and without such communication, program implementation will not be successful.

The working group, as currently comprised, fulfills the intent of D.01-03-073 to expeditiously create a statewide, coordinated final program design incorporating all of the features specifically called out in the decision. That goal was attained on June 29, 2001, with the launching of the program. In developing these implementation details, the working group encouraged parties interested in particular topics to express their views to working group members, and many interested parties, including developers, customers, legislators and others have done so.[20]

The program administrators now meet on an as-needed basis to review program compliance, coordination and consistency issues, as they do with other statewide programs. When policy issues need to be resolved, they are resolved by the Commission, not the working group. Indeed, the petitions to modify discussed in today's decision demonstrate that interested parties have been willing to present these policy issues to the Commission. We believe that the working group process is functioning as intended and should continue as currently structured.

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[20] PG&E Comments, p. 6. SDG&E / SoCal Comments, p. 5, SCE Comments, p. 7. SCE met several times with RealEnergy, and contends that none of the concerns contained in RealEnergy's Petition were brought to its attention. Had they been, SCE states that it would have taken their concerns to the working group, as it had after meeting with other interested parties, such as the South Coast Air Quality Management District, State Assemblymen, manufacturers, etc.

10. Treatment of Overruns and Under Spending in Annual Budgets

In addressing RealEnergy's proposal for modifying the corporate parent limit, PG&E notes that the treatment of overruns and under spending in annual budgets requires further clarification. SDG&E / SoCal's comments also touch on this issue.[21]

In D.01-03-073, we authorized funding for the self-generation program over a four-year period, and established annual program budgets for this purpose. We specifically afforded program administrators the flexibility to shift funds across categories within the overall budgeted amounts, with certain exceptions. However, we did not specifically address the issue of whether or not the utilities could carry over program funding from one year to the next during the four-year period, or incur overruns in the annual budget for one year, to be made up in the next.[22]

We clarify today that the program should be administered and funded with the amounts we authorized in D.01-03-073 for the four-year period. Utilities should carry over any unused funding from one year to the next so that the full four-year budget authorized in D.01-03-073 is utilized for the program. They may request Commission approval to borrow against the annual budget of a subsequent year if program participation is larger than anticipated in the current year by filing an Advice Letter. However, funding for these programs should not exceed the amounts authorized in D.01-03-073 over the four-year period. The restrictions we established in D.01-03-073 will still apply. For example, the

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21 PG&E Comments, p. 4. SDG&E Comments, p. 3.

22 D.01-03-073, mimeo. pp. 20-21.

utilities may not shift any of the carryover funds between the load control and self-generation programs (or vice versa) that they administer without first obtaining Commission authorization. Utilities must still seek approval through advice letters prior to shifting additional funds into either of the non-renewable categories under the self-generation program.[23] Energy Division may request, and the utilities should promptly provide, periodic reports on expenditure levels, reservations, carryovers or overruns and other program status information.

This treatment of multi-year program funding reflects our intent to fund the load control and self-generation initiatives adopted in D.01-03-073 at the full four-year authorized levels. At the same time, it provides program administrators with the flexibility needed to respond to variations in program participation, from one year to the next. Within 30 days, the utilities shall revise memorandum account filings for these programs to reflect the four-year program budget limit authorized in D.01-03-073, as clarified in today's decision. Specifically, the debit entry in the memorandum accounts for self-generation and load control programs, which reflect incremental program costs, should specify that these costs are not to exceed the authorized four-year funding levels for the programs.[24]

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[23] *Id.*

[24] Revisions are to be made to the following Advice Letters (AL): For SCE—AL 1583-E, filed October 15, 2001; For SoCal—AL 3061 filed September 12, 2001; For SDG&E—AL 1363-E-A / 1274-G-A filed on September 12, 2001 and supplemented on October 19, 2001; For PG&E—AL 2140-E-A / 2329-G-A filed on September 20, 2001.

11. Comments on Alternate Draft Decision

Public Utilities Code Section 311(e) generally requires that an alternate to a draft decision be served on all parties, and be subject to public review and comment prior to a vote of the Commission. Rule 77.6(d) provides that comments on the alternate draft decision be filed at least seven days before the Commission meeting. Accordingly, interested parties shall file and serve comments to this alternate draft decision no later than 5:00 p.m. on January 31, 2002. Any reply comments shall be filed by 5:00 p.m. on February 4, 2002. Anyone filing comments shall ensure that the assigned Administrative Law Judge and others on the service list are timely served.

Findings of Fact

1. Nothing in the language of AB 970 specifically addresses the issue raised in the Joint Petition, but the circumstances under which AB 970 was adopted suggest that the Legislature intended the statute to benefit and provide options to all IOU customers.

2. Defining eligibility to include municipal utility electric customers served by a natural gas IOU is consistent with current practices for other public purpose programs funded by IOU ratepayers, i.e., energy efficiency programs.

3. The issue of whether or not municipal electric customers could receive incentives under the self-generation program was not raised as a concern or consideration by any party to the proceeding, and was not discussed in D.01-03-073.

4. The Commission explicitly included natural-gas-only ratepayers to fund and participate in the self-generation program in D.01-03-073.

5. In D.01-03-073 the Commission explicitly stated the rationale for having natural gas customers share in a portion of program costs.

6. Several non-IOU electric utilities offer financial incentives for self-generation.

7. The issue of how best to coordinate multiple funding sources will be addressed in a separate decision in response to the South Coast Air Quality Management District's December 7, 2001 Petition for Modification of D.01-03-073.

8. Any future requests for shifting funds into Levels 2 or 3 by either SoCal or SCE should be coordinated and include the current program activity in all levels throughout the joint service territory.

9. The 1 MW limit project size adopted in D.01-03-073 may deter customers from purchasing the more efficient, less polluting gas-fired distributed generation technologies because those units are manufactured in sizes somewhat higher than 1 MW. A limit of 1.5 MWs is consistent with a logical break in the market.

10. Retaining the current 1 MW cap on the incentives that any single project can receive, while allowing project sizes of up to 1.5 MWs to be eligible, will conform the project size limit to the scales and sizes relevant to the market and continue to ensure a broad dispersion of program funds.

11. Eligible project costs currently include heat recovery equipment directly connected to the generation equipment and controls necessary to interconnect primary heat recovery equipment to existing thermal load at the project site.

12. Including the cost of devices that then use the heat (thermal load equipment) in eligible project costs makes it difficult, if not impossible, to draw the line on those costs, because a wide range of equipment fall under that category, such as absorption chillers, boilers and radiators, thermal storage tanks, etc.

13. There is no evidence that the expenditure of program funds has been unduly hampered because of the corporate parent limit, as RealEnergy asserts in its Petition.

14. A single parent company is eligible to participate in eligible projects totalling 6 MWs over the four-year program period, based on the 1.5 MWs higher project size limit adopted in today's decision.

15. RealEnergy's proposal for increased corporate parent eligibility requires a quarterly budgeting process that would add an additional and unnecessary level of complexity to the administration of the program. It could also encourage some participants to game the system by delaying their projects until the end of a given quarter.

16. Under current due diligence requirements, the applicant must make a decision about whether to proceed with the project within 90 days, not nine months as RealEnergy contends. The additional due diligence requirements proposed by RealEnergy could create unnecessary obstacles to some projects.

17. The working group process is functioning as intended and should continue as currently structured.

18. The load control and self-generation programs adopted in D.01-03-073 should be administered and funded with the amounts authorized in that decision for the four-year period. Utilities should have the flexibility to address annual budget overruns and underspending from one year to the next, as discussed in this decision. This treatment provides administrators with the flexibility needed to respond to variations in program participation and ensures that the program will be funded at the full four-year authorization.

Conclusions of Law

1. The Joint Petition is reasonable and should be approved.

2. Kawasaki's request to increase the eligible project size to 1.5 MWs is reasonable and should be approved. However, any output capacity above the first MW should not be eligible for additional incentives. In order to treat all distributed generation technologies consistently with respect to size limits, this revision should be applicable to all technologies under Levels 1, 2 and 3.

3. RealEnergy's Petition should be denied.

4. Because the treatment of carryovers and overruns of annual budgets was not specifically addressed in D.01-03-073, but was raised in parties' comments, the issue should be clarified in today's decision as discussed herein. As described in this decision, the utilities should modify their memorandum account filings for these programs to reflect the four-year program funding limit authorized by D.01-03-073, as clarified in today's decision.

5. In order to facilitate the continued implementation of these programs, this order should be effective today.

INTERIM ORDER

IT IS ORDERED that:

1. The June 24, 2001 Petition for Clarification of Decision (D.) 01-03-073 jointly filed by Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCal) is approved.

2. The issue of coordination of multiple funding sources shall be addressed by separate decision in this proceeding.

3. As described in this decision, the August 24, 2001 Petition to Modify D.01-03-073 filed by Kawasaki Motors Corporation, U.S.A is approved in part.

4. The September 19, 2001 Petition to Modify D.01-03-073 filed by RealEnergy Inc. is denied.

5. As discussed in this decision, the load control and distributed generation programs adopted in D.01-03-073 shall be administered and funded with the amounts authorized in that decision for the full four-year period. PG&E, SoCal, San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company, collectively referred to as “the utilities,” shall carryover unused funding from one year to the next. The utilities may request approval to borrow against the annual budget of a subsequent year if program participation is larger than anticipated in the current year by filing an Advice Letter. However, the funding flexibility restrictions adopted in D.01-03-073 shall continue to apply.

6. Energy Division may request, and the utilities shall promptly provide, periodic reports on program expenditure levels, reservations, carryovers, overruns and other program status information for the load control and self-generation programs adopted in D.01-03-073.

6. As described in this decision, within 30 days from the effective date of this decision, the utilities shall modify their memorandum account filings for their

self-generation and load control programs to reflect the four-year program funding limit authorized by D.01-03-073. The utilities shall file revised Advice Letters for this purpose, and serve copies on all appearances and the state service list in this proceeding.

7. D.01-03-073 shall be modified as follows:

   a. The maximum system sizes that appear in the tables on pages 4, 29, Ordering Paragraph 5 and Attachment 1, page 26, are changed from 1 megawatt (MW) to 1.5 MWs for Level 1, Level 2 and Level 3 technologies. Under the "incentives offered" and "maximum percentage of project cost" columns, the following language is added for Level 1, Level 2 and Level 3 technologies: "applied to a maximum of 1 MW of output capacity."

   b. The first paragraph on page 28 shall be replaced as follows:

   > "In our judgment, a 1 MW size limit will effectively address the concerns raised by NRDC. This size represents a fairly large installation for a single customer site and, at the same time, will not use up an unreasonable amount of program funding. We note that one system of this size would only receive about one-third of the available funding in SDG&E's service territory, which is the smallest budgeted program. However, we recognize that some of the more efficient, less-polluting gas-fired units may be manufactured in sizes somewhat higher than 1 MW. The record indicates that 1.5 MWs is consistent with a logical break in the market for certain technologies. Therefore, we will allow units up to 1.5 MWs to be eligible under the program, but limit incentives to a maximum of 1 MW in output capacity. Individual customers may apply for incentives for more than one system, as long as the combined size does not exceed 1.5 MWs."

c. Finding of Fact 19 is replaced with the following:

> "Limiting incentives to the first MW of output capacity, with a maximum project size of 1.5 MWs, represents a large installation for a single customer, reflects a logical size break in the market, and will not use up an unreasonable amount of program funding."

This order is effective today.

Dated ________________________, at San Francisco, California.

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Commissioner Bilas' Alternate Draft Decision on all parties of record in this proceeding or their attorneys of record.

Dated January 24, 2002, at San Francisco, California.

/s/ Sally Cuaresma

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

* *

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY **1-866-836-7825 or (415) 703-5282 at least** three working days in advance of the event.